

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

TERRY L CHILDS,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-13-0164-HE
	)	
KATRINA FRECH, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff, a state prisoner appearing *pro se*, filed this § 1983 action alleging violations of his constitutional rights. Consistent with 28 U.S.C. §636(b)(1)(B), (C), the matter has been referred to Magistrate Judge Suzanne Mitchell, who recommends that the motion to dismiss filed by defendants be granted.

Specifically, the magistrate judge recommends that plaintiff's § 1983 claims against defendants Katrina Frech, Lonnie Morton, Robert Denton, Jo Gwinn, Janet Dowling, Patrick Jackson, and David Parker be dismissed with prejudice as being untimely. She also recommends that his claims against defendant Debbie Morton be dismissed without prejudice because he failed to allege the required personal participation.

The court concurs with the magistrate judge's analysis<sup>1</sup> and also notes that the plaintiff, having failed to object to the Report and Recommendation, waived his right to

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<sup>1</sup>Although plaintiff did not respond to defendants' motion to dismiss, the magistrate judge considered its merits. See *Fournierat v. Wisconsin Law Review*, 420 Fed.Appx. 816, 819 (10th Cir. 2011) ("Under Tenth Circuit precedent ... 'a district court may not grant a motion to dismiss for failure to state a claim merely because a party failed to file a response.'" (quoting *Issa v. Comp USA*, 354 F.3d 1174, 1177 (10th Cir. 2003))).

appellate review of the factual and legal issues it addressed.<sup>2</sup> United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); *see* 28 U.S.C. §636(b)(1)(C).

Accordingly, the court adopts Magistrate Judge Mitchell's Report and Recommendation and grants defendants' motion to dismiss [Doc. #28]. Plaintiff's § 1983 claims against defendants Katrina Frech, Lonnie Morton, Robert Denton, Jo Gwinn, Janet Dowling, Patrick Jackson, and David Parker are dismissed with prejudice as being untimely. His § 1983 claims against defendant Debbie Morton are dismissed without prejudice.<sup>3</sup>

**IT IS SO ORDERED.**

Dated this 17th day of July, 2014.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>*Plaintiff sought and was granted an extension of time within which to respond to the Report and Recommendation, but the deadline, June 28, 2014, has passed, and no objection has been filed.*

<sup>3</sup>*Although the court usually would grant defendant leave to amend his claims against defendant Debbie Morton, as he failed to respond to defendants' motion to dismiss or object to the Report and Recommendation, the court concludes leave to amend is not warranted.*